



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

November 2, 2021

Re: FOIA Request NLRB-2021-001416

Dear Jason Wojciechowski (Bush Gottlieb):

This is in response to your request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on September 24, 2021, in which you seek a copy of “[a]ny position statements, evidence, documents, or other materials submitted in support of the Charging Party’s appeal of” *Teamsters Local 396 (UPS)*, Case No. 21-CB-279100. Your request further sought the release of the names of Respondent’s personnel.

We acknowledged your request on September 24, 2021. We have confirmed that you are Counsel for the Charged Party Union.

After conducting a search of the Agency’s electronic casehandling system, NxGen, I have determined that the materials submitted in support of the Charging Party’s appeal are part of the investigative file in an open case and are thus exempt from disclosure pursuant to FOIA Exemption 7(A). 5 U.S.C. § 552(b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with a pending enforcement proceeding. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978).

However, in accordance with the General Counsel’s longstanding policy of providing copies of the appeal to the parties in response to a FOIA request, I have attached a copy of the Charging Party’s appeal statement only. Redactions have been made to portions of the responsive record to protect the privacy interests of individuals named in the record. These redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. The appeal exhibits have been withheld pursuant to Exemption 7(A).

Regarding your request to receive unredacted records because you represent the Charged Party Teamsters Local 396 ("the Union"), you have not established a valid basis for release. The personal privacy redactions made to the released records are necessary and fully supported by the principles of Exemptions 6 and 7(C), even though the Union may claim to know the circumstances or the identities of individuals whose names have been redacted in the records. It is a bedrock principle of FOIA law that once records are released in response to a FOIA request, they are a release to all, and as such, they must be processed in accordance with all FOIA exemptions, which here includes privacy protections. See *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004) ("as a general rule, if the information is subject to disclosure, it belongs to all"). This is because an Agency must properly evaluate the risk of disclosure "not simply in terms of what [you] might do with the information, but also in terms of what anyone else might do with it." *Swan v. SEC*, 96 F.3d 498, 500 (D.C. Cir. 1996).

We have placed you in Category A, commercial use requester. This category refers to requests "from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation." NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(v).

However, as a matter of our administrative discretion, the Agency is voluntarily providing the requested record to you at no cost. This voluntary disclosure is non-precedential.

You may contact Timothy Bearese, the Attorney-Advisor who processed your request, at (202) 273-3752 or by email at Timothy.Bearese@nrlb.gov, as well as the Agency's FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the FOIA Public Liaison is:

FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nrlb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records

Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt
Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nrlrb.gov

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter, such period beginning to run on the calendar day after the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling
FOIA Officer

Attachment: (two pages)